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Via U.S.P.S. and e-mail to farcase.2001-014@gsa.gov

General Services Administration
FAR Secretariat (MVP)
1800 F Street, NW Room 4035
Attn: Ms. Laurie Duarte
Washington, D.C. 20405

Re: FAR Case 2001-014

Dear Ms. Duarte:

Overnite Transportation Company submits the following comments under the above-referenced case, regarding the proposed reconsideration and revocation of FAR rule on Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings (December 20, FAR Case 1999-010).

Overnite wholeheartedly supports the principle that the federal government should conduct its business with companies who can be depended upon to fulfill their contractual obligations with integrity and business ethics. Overnite is such a company. For the reasons noted below and discussed in greater detail in prior comments submitted by others, Overnite strongly opposes the proposed regulatory changes presented in the revised proposed rule. We urge revocation of the December 20 rule, as it is unnecessary, unworkable, and unlikely to serve the best interests of the public, the Government or government contractors.

The proposed rule is unnecessary because the protections it purports to supply are already safeguarded – more appropriately and efficiently – in other statutes and regulations. The proposed rule is duplicative of existing suspension/debarment remedies, but is less efficient and more likely to lead to inconsistent or unfair results. In addition, the proposed contractor responsibility rule is a departure from a longstanding, carefully considered and balanced process developed to deal with suspension and debarment of government contractors in all areas of the Government. The proposed rule, permitting contracting officers (CO) to tar a company with a finding of "nonresponsibility," would disregard the comprehensive, fair, and legally-sound suspension and debarment procedures already in place.

One aspect of the rule that is unworkable and likely to result in companies being deprived of procedural due process by CO attempting to administer the rule, is the requirement that CO consider "all relevant credible information" in making responsibility

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determinations. The proposed rule does not limit CO to considering only final adjudications; rather, the rule appears to direct CO to consider factual allegations not yet finally adjudicated either judicially or administratively. For example, the language of the proposed rule at 9.104-3(c)(2) includes "complaints" among the relevant factors to be considered by CO in making responsibility determinations. This is a startling departure from the American tradition of innocent until proven guilty. An indictment, and still more so a civil complaint, is a mere allegation – it neither represents a proven fact nor an official finding of wrongdoing.

In addition, the proposed rule provides CO vague to no guidance regarding how to analyze and weigh the information they must consider. Given the large number of state and federal laws and statutes already affecting every aspect of a company's operations, and the various state and federal agencies regulating in existing legal spheres, the proposed rule will lead to inconsistent application of the language. The proposed rule will also require additional time and effort (and thus additional costs both to the Government and to government contractors) in administering and complying with the acquisition process. To comply with the requirements of the proposed rule, the CO must consider "all relevant credible information" about whether a contractor *may* have violated – or may only be *accused* of violating – any one of a host of state and federal laws and regulations. Thus, the CO will necessarily either have to accept a mere allegation as a proven fact or spend significant amounts of time gathering and weighing facts that other agencies are already responsible to investigate and which are subject to the advocacy process and court review/adjudication. Once the CO has engaged in duplicative (and possibly inconsistent) fact finding, the CO would next have to engage in legal analysis in myriad fields outside the CO's area of expertise, in order to understand the nature of the claimed violation and the impact such a violation might have on a contractor's responsibility. At best, the procurement process will be delayed, and the Government's recent gains in acquisition reform and streamlining of the process will be undermined. In all likelihood, the process necessitated by the proposed rule will lead to disparate determinations based on the same or similar information and will trigger much litigation.

Overnite agrees with prior comments that the proposed rule is punitive rather than protective or remedial, is contrary to basic fairness and procedural due process that is integral to established government procurement policies, and is inconsistent with the ostensible goal of protecting the Government. The suspension and debarment procedures already established at FAR subpart 9.4 adequately serve to ensure the Government does not do business with companies who lack integrity and business ethics. Overnite respectfully urges revocation of the proposed December 20 rule.

Sincerely,

Overnite Transportation Company

Patricia Lantzy

by Patricia A. Lantzy
Senior Attorney